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Book Review: Legal Culture in the United States: an Introduction by Professor Kirk W. Junker

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This is a review on the book *'Legal Culture in the United States: an Introduction'* by Professor Kirk W. Junker, London: Routledge, 2016, pp. xxiv + 226, $46.26, ISBIN: 9781138194304. The book is a contribution for comparative law. It emphasizes on the role of culture in understanding law. Especially, it is very important for foreign lawyers or law students who are most of the time tempted to see foreign laws from their cultural perspectives.

The book mainly begins by identifying a very serious problem foreign lawyers and students face to understand the very foundations of the US legal system. It proceeds to address the problem by underlying the most important but mostly neglected fact—in any legal system law is more than letters and institutions. In other words, it reminds us that law grows from cultural backgrounds. It also underlines that for foreign law practitioners and students to successfully understand and practice the law in the US, understanding of the US culture which informs the law is very important. Learning law in isolation from the culture which informs it will not be fruitful. One could even characterized the book as part of the bigger discourse that treats law as culture.

At this point, it would be very vital to define what culture means as the book precisely put it to understand law it requires deeper understanding of cultural backgrounds. This also resonates with the understanding that law is more than letters and institutions—the functional approach.[1] Law rather springs from cultural backgrounds which are

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[1] Karl Llewellyn (1893–1962) adopted a functionalist approach of law—to serve certain fundamental functions. He reasoned out that law should be regarded as "an engine having purposes, not values in itself." The core idea of functionalist account of law is "the institution of law which performs various jobs." For him "an institution is an organized activity built around the doing of a job or cluster of jobs. In addition, the most important job the law has is the disposition of trouble cases." See; Raymond Wacks, (2006), Philosophy of Law: A very Short Introduction, New York: Oxford University Press, p

often forgotten. Hence, understanding of law requires cultural knowledge. The British anthropologist Edward Burnett defines culture as "that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capacities and habits acquired by man as a member of society."[2] The implication of this definition is that it makes a clear distinction between culture (of dynamic nature) and nature (of permanence nature).[3] The main message of the book as clearly indicated is that law is the function of culture not that of nature.[4]

In line with the book's argument, Lee Artz and Bren O. Murphy noted that "culture is not natural in the sense of biology or genetics. Rather, culture is social. Culture is all of human life—life that is distinguished by the appropriation of nature with tools, social interaction, and the construction of meaning."[5] They further noted that "Culture includes all that has been created, built, learned, conquered, and practiced in the course of human history."[6]

As far as the review is concerned, the most important observation on the role of culture on human affairs (including legal affairs) is the one given by Daniel Patrick Moynihan: "The central conservative truth is that it is culture, not politics that determines the success of society. The central and liberal truth is that politics can change a culture and save it from itself."[7] Of course, it is good to note that culture is not an independent variable, it is influenced by different factors like: climate, environment and politics.

In order to discuss legal culture in the United States, the book employs—*history,*

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[2] E.B. Taylor, Primitive Culture. Researches into the Development of mythology, Philosophy, Religion, Language, Art, and Custom. 2 vols. 1871. 7th ed. New York: Brentano's 1924

[3] Kirk W, Junker, 2016, Legal Culture in The United States: An Introduction, Routledge, USA: New York, p.xvi

[4] Ibid

[5] Lee Artz and Bren Ortega Murphy (2000), Cultural Hegemony in the United States, London: Sage Publications, Inc, p 29

[6] Ibid, p 32

[7] As quoted in Lawrence R. Harris and Samuel P. Huntington (eds.), (2000), Culture Matters: How Values Shape Human Progress, New York: Basic Books, p. xiv

social theory, language. Philosophy, Discipline and *Mechanistic* as core frames of references in different chapters. Through these frames of references, readers are given tools to interpret and enhance their understanding of the law and the institutions which are established to interpret and enforce the law. The wisdom of the book in using these reference frames is that it avoids the problem of using the law itself as a frame of reference—understanding of a legal system only as a matter of knowing the sources of the law and the institutions. In simple language, it means, understanding of law as—the application of facts to rules (the mechanistic approach).

After discussing: "the soul and spirit of U.S. legal culture through the experience of the common law in chapter one"; "the always and already comparative nature of foreign law" in chapter two; and "the subtle differences between civil law and common law in study and practice" in chapter three; the book discussed the six core frames of references one by one in chapters 4, 5. 6, 7, 8, and 9. For instance, while discussing the *historical frame of reference* in chapter four, the book underlined that to understand the law as culture we cannot have only one historical explanation but multiplicity of development possibilities and explanations to deal with. Regarding, the relationship between law and history, Carl Joachim Friedrich remarked, "from feudalism to capitalism, from Magna Carta to the constitutions of contemporary Europe, the historian encounters law as a decisive factor."[8] He also pointed out that, "history involves comparison and the English lawyer who knew nothing and cared nothing for any system but his own hardly came in sight of legal history. (. . .) an isolated system cannot explain itself, still less explain its history."[9]

The book accurately claims that such a historical framework brings us to the state of affairs in U.S. legal education, training and practice. The first important lesson for lawyers from the perspective of this historical framework is that legal systems have their own histories (narrations). Their implication is that "rules of law and institutions

[8] Friedrich CJ (1963) the philosophy of law in historical perspective. Chicago, pp 233–234
[9] Maitland FW (1911) Collected papers. Cambridge, pp 488–489

of law go in and out of existence."[10] While the second lesson is "it would be foolish arrogance to believe we have arrived at some endpoint of perfection today such that no further change will, or needs to occur. So, it is not a question of whether things will change, but rather a question of what will change next, when and why?"[11]

While dealing with the *social theory* frame of reference in chapter five, the book highlighted that a legal system should be understood by what its actors do in their interaction with the society. In other words, it emphasized that a legal system is not a set of books or abstract principles rather it is a set of social practices. For George Mousourakis, a sociological account of law[12] "normally hinges on three closely interrelated assumptions: law cannot be understood except as a social phenomenon; an analysis of legal concepts provides only a partial explanation of law in action; and law is one form of social control."[13]

In addressing the *language* frame of reference in chapter six, the book gave due focus that there is no law without language. It emphasized that it would be misleading to conceive of law and language as two separate independent entities. In line with this, Lee Artz & Bren, O. Murphy noted that "Language is an instrument in hegemony, a product of hegemony, and a battlefield where hegemony[14] is negotiated. To build ideologies that permit and reinforce a given hegemony, a common language is

[10] Kirk W, Junker, 2016, supra, n. 3, p. 71.
[11] Ibid
[12] The sociology of law is defined as "the study of the relationship between law and society, including the role played by law and legal process in effecting certain observable forms of behavior; the values associated with law; and the collective beliefs and intuitions that relate to these values." See, George Mousourakis (2019), Comparative Law and Legal Traditions: Historical and Contemporary Perspectives, Switzerland: Springer, p 16.
[13] Ibid.
[14] The concept of hegemony was defined differently in different times. For instance, at the beginning when the concept was coined, "it was more or less limited to predominance of one nation over others." Currently, it is used to describe "the intricacies of power relations in many different fields from literature, education, film and cultural studies to political science, history and international relations." Antonio Gramsci (1891–1937), one of the most frequently cited and widely translated political theorists and cultural critics of the twentieth century, redefined hegemony to mean "the formation and organization of consent." See; Peter, Ives (2004), Language & Hegemony in Gramsci, London: Pluto Press, p. 2.

needed."[15] They further noted that "Language is based on shared meanings created through common cultural and historical experiences. Different languages often create different meanings for a social reality. Language influences cultural identity, a primary condition for hegemony and it is a pressing reason for dominant forces to oppose cultural diversity and bilingual education."[16]

Whereas in discussing *philosophy*[17] as a frame of reference in chapter seven, the book explained some of the larger phases through which U.S. legal philosophy has passed. It also thoroughly dealt with some of the well-known and popular philosophers. It even further emphasized the reliance of the U.S. laws upon the philosophies of empiricism[18] as opposed to rationalism.[19]

In addressing the *disciplinary* frame of reference in chapter eight, the book underlined the fact that US law, like English law before it, did not begin in universities rather, the discipline still owes its accreditation not to universities and state educational departments, but to the American Bar Association—a private organization of lawyers who nevertheless have the power of gate keeping on the approximately two hundred accredited law schools in the US. The disciplinary frame work argues that if a student does not attend an ABA-accredited law school, he or she cannot sit for the bar examination and without the bar examination, the student cannot obtain a license and

[15] Lee Artz and Bren Ortega Murphy (2000), Cultural Hegemony in the United States, London: Sage Publications, Inc, p 32.
[16] Ibid.
[17] In England and other common law countries Legal philosophy is referred to as jurisprudence. Of course, it is good to note that Continental European jurists distinguish between legal philosophy (in a narrower sense) and general theory of law. Legal philosophy "examines the values that underpin legal systems, institutions and rules." The general theory of law focuses on "the basic concepts, methods, classification schemes and instruments of the law." Ibid, p. 13
[18] Empiricism is defined as "the epistemological claim that the mind at birth is a 'blank tablet' and that all knowledge (exclusive of logical and mathematical knowledge) is derived ultimately from sense experience." See; Miller, ED. L. & John Jensen, 2009, Questions that Matter: An Invitation to Philosophy. 6th edn. McGraw-Hill, USA: New York, p. 205
[19] Rationalism in the strict sense is defined as "the theory that some knowledge about actual existing things is delivered by reason rather than sense experience." See; Miller, ED. L. & John Jensen, 2009, Questions that Matter: An Invitation to Philosophy. 6th edn. McGraw-Hill, USA: New York, p. 183

practice law. Thus, this manner of organizing the discipline of study and practice is woven throughout attitudes about the nature of legal education, the relative prestige of law professors compared to judges and many other issues important for the external lawyer to appreciate in order to encounter US law.

In contrast to the cultural features of law, though in a limited way, the book also illustrated the *mechanistic* frame of reference—the application of USA laws and cases to facts—in chapter nine. The book mentioned only samples of some legal mechanics like: discovery, lay juries, the trial, the doctrine of *stare decisis* and federation. The book explicitly acknowledged that some more legal mechanics like: class action, oaths, the lawyers' fee, plea bargain and the bail system in criminal cases are not discussed and are left to be researched by a foreign student. This might be taken as the limitation of the book. If they were discussed in the book they would have been of big help by saving the time and energy of the foreign student. On the other hand given the fact that the book cannot include everything to be compared, it has selected six very important frameworks to compare and analyze. Hence, it is believed that whatever limitations the book might have, it could serve as a source of inspiration for further research.

Generally, the book provides the reader (specially the foreign lawyer or student) with a clear understanding to the ways in which US laws reflect its culture. This is done by employing reference frames. The reference frames help readers to provide a set of interpretation tools to understand the US legal system and also to be more successful in their studies and their careers in the US or abroad.

To sum up, this wonderful book is very important for understanding comparative law and it also leaves its own mark in comparative law discourses. Mainly, with a deeper understating of the cultural context of US law, foreign law practitioners and students in the US will be empowered to quickly adapt to their professional practice and studies. The massive contribution of the book is that it precisely underlined the most

important idea that culture is the most crucial element through which all aspects of law should be understood and analyzed. In other words, it emphasized culture to be the main gateway to understand foreign law. Of course, it would have been a plus if the book mentioned the concept of *USA cultural hegemony*—exporting the USA legal philosophy (the law and development movement which was funded by the Ford Foundation)—to other countries in its conceptual discussion.

Though it is limited to the U.S. legal culture (legal values), the book is an outstanding introduction to the cultural analysis of law and comparative lawyers could find much food for thought. The book is also to be congratulated for emphasizing that an understanding of the deep ties between law and culture always plays a great role in our consideration of the interactions among legal systems and the melding of legal rules. It also lays the essential groundwork for future explorations. Thus, it is a must-read for foreign law students and lawyers to successfully understand and practice law in the USA.

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